

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

| | | |
|-------------------------|---|---------------------|
| DALE YELLOW HORSE, |) | Civ. 09-5039 |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | |
| |) | NOTICE OF RULE 4(m) |
| PENNINGTON COUNTY JAIL, |) | |
| BROOK M. HAGA; |) | |
| DENNIS D. FELLER; |) | |
| CURTIS L. MAXWELL; |) | |
| JESSE L. SCHIFERL; |) | |
| PHILLIP L. GREER; and |) | |
| ALL OFFICERS AT THE |) | |
| PENNINGTON COUNTY JAIL, |) | |
| |) | |
| Defendants. |) | |

Plaintiff Dale Yellow Horse filed a complaint in the above-entitled action on April 30, 2009. Pursuant to Federal Rule of Civil Procedure 4(m), Mr. Yellow Horse has 120 days to serve the summons and complaint on each defendant. Mr. Yellow Horse has not filed with the Clerk of Courts verification of service on defendant Curtis L. Maxwell. Rule 4(m) states in pertinent part:

If a defendant is not served within 120 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time.

Fed. R. Civ. P. 4(m).

More than 120 days have elapsed since the filing of this complaint. The court hereby places Mr. Yellow Horse on notice that it will dismiss his claims against Mr. Maxwell without prejudice if service of the summons and complaint is not made upon Mr. Maxwell prior to October 23, 2009. Accordingly, it is hereby

ORDERED that Mr. Yellow Horse shall make proper service of the summons and the complaint upon Curtis L. Maxwell and file proof of such service with the Clerk of Court's Office on or before **October 23, 2009** or this matter shall be dismissed without prejudice pursuant to Rule 4(m) as to defendant Curtis L. Maxwell, unless Mr. Yellow Horse can show good cause for its failure to serve defendant Maxwell.

Dated September 24, 2009.

BY THE COURT:

/s/ *Veronica L. Duffy*
VERONICA L. DUFFY
UNITED STATES MAGISTRATE JUDGE